

IC 23-17-26

Chapter 26. Foreign Corporations

IC 23-17-26-1

Necessity of certificate of authority; transacting business

Sec. 1. (a) A foreign corporation may not transact business in Indiana until the corporation obtains a certificate of authority from the secretary of state.

(b) The following activities do not constitute transacting business within the meaning of subsection (a):

- (1) Maintaining, defending, or settling a proceeding.
- (2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs.
- (3) Maintaining bank accounts.
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositories with respect to the securities.
- (5) Selling through independent contractors.
- (6) Soliciting or obtaining orders, by mail or through employees or agents, if the orders require acceptance outside of Indiana before the orders become contracts.
- (7) Making loans or otherwise creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- (9) Owning real or personal property.
- (10) Conducting an isolated transaction that is completed within thirty (30) days and that is not in the course of repeated transactions of a similar nature.
- (11) Transacting business in interstate commerce.
- (12) Soliciting funds if otherwise authorized by Indiana law.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-2

Transacting business without certificate of authority

Sec. 2. (a) Except as provided in subsection (e), a foreign corporation transacting business in Indiana without a certificate of authority may not maintain a proceeding in an Indiana court until the foreign corporation obtains a certificate of authority.

(b) Except as provided in subsection (e), the successor to a foreign corporation that transacted business in Indiana without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in an Indiana court until the foreign corporation or the foreign corporation's successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, a foreign corporation's successor, or an assignee until the court determines whether the foreign corporation or the foreign

corporation's successor requires a certificate of authority. If the court determines, the court may further stay the proceeding until the foreign corporation or the foreign corporation's successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of not more than ten thousand dollars (\$10,000) if the foreign corporation transacts business in Indiana without a certificate of authority. The attorney general may collect penalties due under this subsection.

(e) The failure of a foreign corporation to obtain a certificate of authority does not do any of the following:

- (1) Impair the validity of the foreign corporation's corporate acts.
- (2) Prevent the foreign corporation from defending a proceeding in Indiana.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-3

Application for certificate of authority; contents; certificate of existence from foreign state or country

Sec. 3. (a) A foreign corporation may apply for a certificate of authority to transact business in Indiana by delivering an application to the secretary of state. The application must set forth the following:

- (1) The name of the foreign corporation or, if the foreign corporation's name is unavailable for use in Indiana, a corporate name that satisfies the requirements of section 6 of this chapter.
- (2) The name of the state or country under whose law the foreign corporation is incorporated.
- (3) The date of incorporation and period of duration.
- (4) The street address of the foreign corporation's principal office.
- (5) The address of the foreign corporation's registered office in Indiana and the name of the foreign corporation's registered agent at the office.
- (6) The names and usual business addresses of the foreign corporation's current directors and officers.
- (7) Whether the foreign corporation has members.
- (8) Whether the corporation, if the foreign corporation had been incorporated in Indiana, would be a public benefit, mutual benefit, or religious corporation.

(b) The foreign corporation must deliver with the completed application a certificate of existence or a similar document duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-4

Amended certificate of authority

Sec. 4. (a) A foreign corporation authorized to transact business in Indiana must obtain an amended certificate of authority from the

secretary of state if the corporation changes any of the following:

- (1) The foreign corporation's corporate name.
- (2) The period of the foreign corporation's duration.
- (3) The state or country of the foreign corporation's incorporation.

(b) The requirements of section 3 of this chapter for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-5

Rights and privileges under certificate of authority

Sec. 5. (a) A certificate of authority authorizes the foreign corporation to which the certificate is issued to transact business in Indiana subject to the right of the state to revoke the certificate as provided in this article.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as and, except as otherwise provided by this article, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a similar domestic corporation.

(c) This article does not authorize Indiana to regulate the organization or internal affairs of a foreign corporation authorized to transact business in Indiana.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-6

Corporate name

Sec. 6. (a) If the corporate name of a foreign corporation does not satisfy the requirements of IC 23-17-5-1, the foreign corporation may, to obtain or maintain a certificate of authority to transact business in Indiana:

- (1) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "Ltd.", to the foreign corporation's corporate name for use in Indiana; or
- (2) use a fictitious name to transact business in Indiana if the foreign corporation's real name is unavailable and the foreign corporation delivers to the secretary of state for filing a copy of the resolution of the foreign corporation's board of directors, certified by the foreign corporation's secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from the following:

- (1) The corporate name of a corporation incorporated or authorized to transact business in Indiana under IC 23-1.
- (2) A corporate name reserved or registered under IC 23-17-5-2, IC 23-17-5-3, IC 23-1-23-2, or IC 23-1-23-3.
- (3) The fictitious name of another foreign business or nonprofit

corporation authorized to transact business in Indiana.

(4) The name of a nonprofit entity organized or authorized to transact business in Indiana.

(c) A foreign corporation may apply to the secretary of state for authorization to use in Indiana the name of another corporation incorporated or authorized to transact business in Indiana that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change the other corporation's name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A foreign corporation may use in Indiana the name, including the fictitious name, of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the foreign corporation has:

(1) merged with the other corporation;

(2) been formed by reorganization of the other corporation; or

(3) acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in Indiana changes the foreign corporation's corporate name to a name that does not satisfy the requirements of IC 23-17-5-1, the foreign corporation may not transact business in Indiana under the changed name until the foreign corporation adopts a name satisfying the requirements of IC 23-17-5-1 and obtains an amended certificate of authority under section 4 of this chapter.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-7

Registered office and registered agent

Sec. 7. A foreign corporation authorized to transact business in Indiana must continuously maintain in Indiana:

(1) a registered office; and

(2) a registered agent, who may be:

(A) an individual who resides in Indiana and whose business office is identical with the registered office;

(B) a corporation incorporated or authorized to transact business under IC 23-1 whose business office is identical with the registered office;

(C) a foreign business or nonprofit corporation authorized to transact business in Indiana whose office is identical with the registered office; or

(D) a nonprofit entity organized or authorized to transact business in Indiana whose office is identical with the registered office.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-8

Change in registered office or registered agent

Sec. 8. (a) A foreign corporation authorized to transact business in Indiana may change the foreign corporation's registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

- (1) The foreign corporation's name.
- (2) The street address of the foreign corporation's current registered office.
- (3) If the current registered office is to be changed, the street address of the foreign corporation's new registered office.
- (4) The name of the foreign corporation's current registered agent.
- (5) If the current registered agent is to be changed, the name of the foreign corporation's new registered agent and the new agent's written consent or a representation that the new registered agent has consented, either on the statement or attached to the statement, to the appointment.
- (6) That after the change is made, the street addresses of the foreign corporation's registered office and the business office of the foreign corporation's registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the agent may change the street address of the registered office of any foreign corporation that the registered agent serves by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-9

Resignation of registered agent

Sec. 9. (a) The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing as described in IC 23-17-29 a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the secretary of state shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail one (1) copy to the foreign corporation at the foreign corporation's principal office address shown in the foreign corporation's most recent annual report.

(c) The agency appointment is terminated, and the registered

office discontinued if so provided, thirty-one (31) days after the date on which the statement was filed.

As added by P.L.179-1991, SEC.1. Amended by P.L.228-1995, SEC.21.

IC 23-17-26-10

Service of process or notice on foreign corporation

Sec. 10. (a) The registered agent of a foreign corporation authorized to transact business in Indiana is the foreign corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or other executive officer under Trial Rule 4.6(A)(1) at the foreign corporation's principal office shown in the foreign corporation's application for a certificate of authority or in the foreign corporation's most recent annual report filed if the foreign corporation:

- (1) does not have a registered agent or the foreign corporation's registered agent cannot with reasonable diligence be served;
- (2) has withdrawn from transacting business in Indiana under section 11 of this chapter; or
- (3) has had the foreign corporation's certificate of authority revoked under section 13 of this chapter.

(c) Service is perfected under subsection (b) the earliest of the following:

- (1) The date the foreign corporation receives the mail.
- (2) The date shown on the return receipt, if signed on behalf of the foreign corporation.
- (3) Five (5) days after the service is deposited with the United States Postal Service, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means of serving a foreign corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-11

Withdrawal of foreign corporation; necessity of certificate of withdrawal; application for certificate; service of process after withdrawal

Sec. 11. (a) A foreign corporation authorized to transact business in Indiana may not withdraw from Indiana until the foreign corporation obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in Indiana may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth the following:

- (1) The name of the foreign corporation and the name of the state or country under whose law the foreign corporation is

incorporated.

(2) That the foreign corporation is not transacting business in Indiana and that the foreign corporation surrenders the foreign corporation's authority to transact business in Indiana.

(3) That the foreign corporation revokes the authority of the foreign corporation's registered agent to accept service on the foreign corporation's behalf and appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action arising during the time the foreign corporation was authorized to transact business in Indiana.

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subdivision (3).

(5) A commitment to notify the secretary of state in the future of any change in the mailing address.

(c) After the withdrawal of the foreign corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth in the foreign corporation's application for withdrawal.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-12

Revocation of certificate of authority of a foreign corporation; grounds

Sec. 12. The secretary of state may commence a proceeding under IC 23-17-23-2 to revoke the certificate of authority of a foreign corporation authorized to transact business in Indiana if any of the following conditions exists:

(1) The foreign corporation does not deliver the annual report to the secretary of state within sixty (60) days after the report is due.

(2) The foreign corporation is without a registered agent or registered office in Indiana for at least sixty (60) days.

(3) The foreign corporation does not inform the secretary of state under section 8 or 9 of this chapter that the foreign corporation's:

(A) registered agent or registered office has changed;

(B) registered agent has resigned; or

(C) registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance.

(4) An incorporator, a director, an officer, or an agent of the foreign corporation signed a document the incorporator, director, officer, or agent knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing.

(5) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having

custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that the foreign corporation has been dissolved or disappeared as the result of a merger.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-13

Procedure for revocation; service of process after revocation; authority of registered agent

Sec. 13. (a) If the secretary of state determines that a ground exists under section 12 of this chapter for revocation of a certificate of authority, the secretary of state shall, under section 10 of this chapter, serve the foreign corporation with written notice of the determination.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under section 10 of this chapter, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground for revocation and the revocation's effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 10 of this chapter.

(c) The authority of a foreign corporation to transact business in Indiana ceases on the date shown on the certificate revoking the foreign corporation's certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in Indiana. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at the foreign corporation's principal office shown in the foreign corporation's most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of the foreign corporation's principal office, or, if a report or communication is not on file, in the foreign corporation's application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the foreign corporation.

As added by P.L.179-1991, SEC.1.

IC 23-17-26-14

Appeal of revocation

Sec. 14. (a) A foreign corporation may appeal the secretary of state's revocation of the foreign corporation's certificate of authority

to the circuit or superior court of the county in which the foreign corporation's registered office is located within thirty (30) days after service of the certificate of revocation is perfected under section 10 of this chapter. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the foreign corporation's certificate of authority and the secretary of state's certificate of revocation.

(b) The court may do the following:

(1) Order the secretary of state to reinstate the certificate of authority.

(2) Take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

As added by P.L.179-1991, SEC.1.